

APR 21 1988

No. 87-1497

(3)

JOSEPH E. SPANIO, JR.  
CLERK

**IN THE  
SUPREME COURT  
OF THE UNITED STATES**

**October Term, 1987**

**EASTER ENTERPRISES, INC. d/b/a ACE LINES, INC.,**  
*Petitioner,*

**v.**

**LORAN W. ROBBINS, MARION M. WINSTEAD, ROBERT S.  
SANSONE, R. JERRY COOK, HOWARD MCDUGALL,  
ROBERT J. BAKER, R.V. PULLIAM, SR., AND ARTHUR H.  
BUNTE, JR., TRUSTEES OF THE CENTRAL STATES, SOUTHEAST  
AND SOUTHWEST AREAS PENSION FUND AND CENTRAL  
STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND  
WELFARE FUND,**  
*Respondents,*

**RESPONDENTS' BRIEF IN OPPOSITION TO PETITION  
FOR CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT**

**RUSSELL N. LUPLOW, P.C.**  
Russell N. Luplow\*  
Diana L.S. Peters  
33 Bloomfield Hills Parkway  
Suite 145  
Bloomfield Hills, MI 48013  
(313) 644-8666  
*Attorneys for Respondents*  
*\*Counsel of Record*

**April 22, 1988**

**QUESTION PRESENTED**

Whether the statute of limitations applicable to state law actions on written contracts is the most analogous statute to be applied to trustee collection actions arising under the LMRA and ERISA? (Petition)

## TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
TABLE OF CONTENTS .....	ii
TABLE OF AUTHORITIES .....	iii
RESPONDENTS' STATEMENT OF THE CASE .....	1
REASONS NOT TO GRANT ACE LINES' PETITION	
1. Supreme Court Review Is Not Warranted Until The Third Circuit Revisits <i>DeBolt</i> in light of <i>Schneider</i> ...	4
2. This Court Should Not Review The Applicability Of An Oral Contract Statute Of Limitations Or An ERISA Statute Of Limitations Since The Eighth Circuit Itself Did Not Address These Alternatives; Moreover, Such Alternatives Conflict With This Court's Precedents .....	7
III. CONCLUSION.....	11

## TABLE OF AUTHORITIES

CASES	Page(s)
<i>Agency Holding Corp. v. Malley-Duff Associates</i> , 107 S.Ct. 2759 (1987) .....	9, 10
<i>Arroyo v. U.S.</i> , 359 U.S. 419 (1959) .....	4
<i>Byrnes v. DeBolt Transfer, Inc.</i> , 741 F.2d 620 (3d Cir. 1984) .....	4, 6, 7
<i>Central States, Southeast and Southwest Areas Pension Fund, et. al. v. Central Transport</i> , 472 U.S. 559 (1985) .....	6, 7, 8
<i>Central States, Southeast and Southwest Areas Pension Fund v. Kraftco</i> , 799 F.2d 1098 (6th Cir. 1986) .....	5
<i>Del Costello v. International Brotherhood of Teamsters</i> , 462 U.S. 151 (1963) .....	4, 9
<i>Employees Health Trust v. Elks Lodge</i> , 827 F.2d 1324 (9th Cir. 1987) .....	6
<i>Hawaii Carpenters Trust Fund v. Waiola Carpenter Shop, Inc.</i> , 823 F.2d 289 (9th Cir. 1987) .....	5, 6, 9
<i>Lewis v. Seanor Coal Co.</i> , 382 F.2d 437 (3d Cir. 1967) .....	4
<i>Moglia v. Geoghegan</i> , 403 F.2d 110 (2d Cir. 1968) .....	4
<i>O'Hare v. General Marine Transport Corp.</i> , 740 F.2d 160 (2d Cir. 1984) .....	5
<i>Schneider Moving and Storage Co. v. Robbins</i> , 466 U.S. 364 (1984) .....	4, 5, 6, 8
<i>Teamsters Pension Trust Fund v. John Tinney Delivery Service</i> , 732 F.2d 319 (3d Cir. 1984) .....	6
<i>Trustees for Alaska Laborers-Construction Industry Health and Security Fund v. Ferrell</i> , 812 F.2d 512 (9th Cir. 1987) .....	5, 6
<i>UAW v. Hoosier Cardinal Corp.</i> , 383 U.S. 696 (1966) .....	4, 7, 8, 9, 10
<i>Waggoner v. Dallaire</i> , 649 F.2d 1362 (9th Cir. 1981) ...	4

## TABLE OF AUTHORITIES — (Continued)

<b>CASES</b>	<b>Page(s)</b>
<i>Youakim v. Miller</i> , 425 U.S. 231 (1976) .....	7

**STATUTES****Labor-Management Relations Act, "LMRA"**

29 U.S.C. § 160(b), Section 10(b) .....	9
29 U.S.C. § 185(a), Section 301(a) .....	2, 5, 8
29 U.S.C. § 186(c)(5), Section 302(c)(5) .....	1, 4, 8

**Employee Retirement Income Security Act, "ERISA"**

29 U.S.C. § 1102 .....	1
29 U.S.C. § 1103 .....	1
29 U.S.C. § 1104 .....	1
29 U.S.C. § 1113(a)(1) .....	9
29 U.S.C. § 1113(a)(2) .....	9
29 U.S.C. § 1132, Section 502 .....	2, 5
29 U.S.C. § 1132(e) .....	2
29 U.S.C. § 1145, Section 515 .....	2, 5
29 U.S.C. § 1451(f)(1) .....	9
29 U.S.C. § 1451(f)(2) .....	9

**Miscellaneous Statutes**

Iowa Code 91A .....	2
---------------------	---

---

No. 87-1497

---

**In the  
SUPREME COURT OF THE UNITED STATES  
October Term, 1987**

---

EASTER ENTERPRISES, INC. d/b/a ACE LINES, INC.,  
*Petitioner,*

v.

LORAN W. ROBBINS, MARION M. WINSTEAD, ROBERT S.  
SANSONE, R. JERRY COOK, HOWARD MCDUGALL,  
ROBERT J. BAKER, R.V. PULLIAM, SR., AND ARTHUR H.  
BUNTE, JR., TRUSTEES OF THE CENTRAL STATES, SOUTHEAST  
AND SOUTHWEST AREAS PENSION FUND AND CENTRAL  
STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND  
WELFARE FUND,  
*Respondents,*

---

**RESPONDENTS' BRIEF IN OPPOSITION TO PETITION  
FOR CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT**

---

**RESPONDENTS' STATEMENT OF THE CASE**

The Central States, Southeast and Southwest Areas Pension and Health and Welfare Funds ("Central States") are two of the largest Taft-Hartley employee benefit trusts in the United States. In accordance with the LMRA (29. U.S.C. § 186(c)(5)) and ERISA (29 U.S.C. §§ 1102-1104), the Central States Funds are each administered pursuant to a comprehensive written Trust Agreement. Article III, Section 1 of each Trust Agreement provides that "[e]ach Employer shall make continuing and prompt payments to the Trust Fund as required by the applicable collective bargaining agreement between the parties." (Jt. App.

89, 109). Article III, Section 5 permits the Trustees (by their representatives) to audit the pertinent records of contributing employers to verify the accuracy of reporting and contribution. (Jt. App. 90, 110). Article III, Section 4 authorizes the Trustees to demand and collect contributions and to initiate legal proceedings (if necessary) to effectuate collection. (Jt. App. 89-90, 109-110).

Ace Lines is an Iowa corporation and long-time contributor to the Central States Funds. For many years Ace was signatory to national collective bargaining agreements which incorporate the Trust Agreements by reference and require specified weekly contributions to both Central States Funds. (Jt. App. 35, 37, 53-66). Ace Lines also executed three "Participation Agreements" in which the employer likewise agreed to be bound by the terms and conditions of the Central States trusts. (Jt. App. 122, 137, 138).

On December 12, 1983, the Trustees filed suit against Ace Lines to collect delinquent contributions. Jurisdiction was invoked under Section 301(a) of the LMRA and Section 502 of ERISA as Ace had violated both the Trust Agreements and the collective bargaining agreements. (Complaint, ¶ 4, Jt. App. 4). By way of affirmative defenses, Ace answered that the Trustees' action was barred by the ERISA statute of limitations (unspecified), by a six-month statute of limitations governing actions arising under the LMRA, and by the two-year statute of limitations applicable to actions arising under Iowa's Wage Payment Collection Act (Ia. Code 91A). (Jt. App. 13-18).

In response, Central States contended that Ace Lines should be held to its agreement to comply with the terms of the Trust Agreements and hence to Illinois' ten-year statute of limitations as provided for in the contracts.<sup>1</sup> Alternatively, Central States argued that Iowa's ten-year statute of limitations for actions on written

---

<sup>1</sup>In accordance with Article XIV, Section 7 of the Trust Agreement governing the Pension Fund and Article XI, Section 7 of the Trust Agreement governing the Health and Welfare Fund, such legal proceedings are uniformly subject to Illinois' ten-year statute of limitations for actions on written contracts regardless of the state in which the Trustees elect to sue under 29 U.S.C. § 1132(e). (Cross-Petition for Certiorari, p.2).

contracts should be applied in the event the court believed itself bound to apply the law of the forum state.

On January 23, 1985, the Magistrate ruled that Central States' claims were governed by the two-year statute of limitations applicable to Iowa's Wage Payment Collection Law. (Jt. App. 215-217). In two separate opinions (October 11, 1985 and March 6, 1986), the district court affirmed. (Petition, Appendices D and E, 21a-26a). Agreeing with Ace Lines that Iowa had the "most significant relationship" to the action and that Iowa's Wage Payment statute of limitations was "most analogous," the court also stated that "a two-year limitations period for actions to collect delinquent employee benefit plan contributions is no more too short to comport with congressional policy than a ten-year period would be too long." (*Id.*, 25a). This result served to time-bar most of Central States' claims.

An interlocutory appeal was taken to the Court of Appeals for the Eighth Circuit, which reversed the ruling of the district court. The court held that the most analogous state statute of limitations was the one governing actions on written contracts. In so ruling, the panel rejected the district court's characterization of trustee collection actions as "labor disputes" and hence the short statute of limitations applicable to actions arising under the wage payment act. The Eighth Circuit also rejected the Trust Agreements' "choice of law" provision as "inapposite" to nondiversity actions arising under federal law. (Petition, Appendix B, 14a-17a). Both Central States and Ace Lines filed Petitions for Rehearing *en banc* which were denied on November 24, 1987.

## REASONS NOT TO GRANT ACE LINES' PETITION

### 1. Supreme Court Review Is Not Warranted Until The Third Circuit Revisits DeBolt In Light Of Schneider

It is well established that actions involving contributions to employee benefit plans governed by ERISA and the LMRA are actions "arising under" and governed by federal law. Neither statute contains a limitations period for the governance of trustee collection actions. Nevertheless, this Court has articulated guidelines for selecting the "most appropriate" or "most analogous" statute of limitations to fill this Congressional silence. In accordance with *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966) and *Del Costello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), a court's task is first to "characterize" the action (i.e., the claims involved) as a matter of federal law in order to find a suitable analogy and then to apply the analogous statute of limitations that is also "most appropriate" because it best promotes the federal objectives and policies intended to be served by the statute under which the federal cause of action has arisen. Though not exclusive, state law remains the primary source from which to borrow.

The *contractual* nature of trustee collection actions is clearly evidenced by the language of the relevant provisions of the LMRA and ERISA. Section 302(c)(5) of the LMRA (29 U.S.C. § 186(c)(5)) prohibits an employer from making and trustees from accepting contributions except pursuant to detailed written agreements. *Arroyo v. U.S.*, 359 U.S. 419 (1959); *Moglia v. Geoghegan*, 403 F.2d 110 (2d Cir. 1968). Courts enforce this mandatory "writing" requirement with uncompromising rigidity; hence, oral understandings are never permitted to modify an employer's written contribution obligations to Taft-Hartley employee benefit funds. *Lewis v. Seanor Coal Co.*, 382 F.2d 437 (3d Cir. 1967); *Moglia v. Geoghegan*, *supra*; *Waggoner v. Dallaire*, 649 F.2d 1362 (9th Cir. 1981).

Actions to enforce detailed written agreements concerning pension and health and welfare contributions—whether incorpo-

rated in a collective bargaining agreement or in a trust agreement—may be brought both under Section 301(a) of the LMRA (29 U.S.C. § 185(a)), which confers federal court jurisdiction over “suits for violation of *contracts* between an employer and a labor organization,” (emphasis added) and under Section 502 of ERISA (29 U.S.C. § 1132), which confers federal court jurisdiction over suits to enforce Section 515 of the statute (29 U.S.C. § 1145). Section 515 establishes a federal cause of action sounding in *contract*: “Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.” (Cross-Petition, App. F, 27a).

Consistent with this statutory language, as well as the language of the Central States Trust Agreements, this Court unanimously characterized collection actions brought by the Trustees of the Central States Funds against two delinquent employers as suits “for the judicial enforcement of the trust terms” even though disputed terms of the employers’ collective bargaining agreements required resolution by the district court in which the actions had been filed. *Schneider Moving and Storage Co. v. Robbins*, 466 U.S. 364, 366 (1984).

Likewise, both before and after *Schneider*, most courts of appeals have held, as did the Eighth Circuit, that Trustee collection actions arising under the LMRA and ERISA should be characterized as actions on contracts for the purpose of selecting an appropriate statute of limitations. *O’Hare v. General Marine Transport Corp.*, 740 F.2d 160 (2d Cir. 1984), *Central States, Southeast and Southwest Areas Pension Fund v. Kraftco*, 799 F.2d 1098 (6th Cir. 1986), *Trustees for Alaska Laborers-Construction Industry Health and Security Fund v. Ferrell*, 812 F.2d 512 (9th Cir. 1987); *Hawaii Carpenters Trust Fund v. Waiola Carpenter Shop, Inc.*, 823 F.2d 289 (9th Cir. 1987).

While it is true that the state laws of New York, Tennessee, Alaska and Hawaii applied in the above cases do not distinguish

between "written" and "oral" contracts, there is nothing in these decisions to suggest that the Second, Sixth, or Ninth Circuits would select a shorter rather than a longer contract limitations period if a particular state's law required such a choice. In *Waiola, supra*, the Ninth Circuit stated: "[i]mposing too short a statute would interfere with the strong federal policy that underlies ERISA." 823 F.2d at 298. Moreover, in a subsequent decision, *Employees Health Trust v. Elks Lodge*, 827 F.2d 1324 (9th Cir. 1987), the court of appeals applied Washington's six-year written contract statute of limitations to a trustee collection action although Washington also has a three-year statute of limitations for actions on unwritten contracts. The panel regarded this result as consistent with prior Ninth Circuit precedents; i.e., *Ferrell, supra* and *Waiola, supra*.

In the instant case, the district court rejected the majority view and followed instead two decisions of the Court of Appeals for the Third Circuit: *Teamsters Pension Trust Fund v. John Tinney Delivery Service*, 732 F.2d 319 (3d Cir. 1984) and *Byrnes v. DeBolt Transfer, Inc.*, 741 F.2d 620 (3d Cir. 1984). There, the court of appeals ruled that Pennsylvania's Wage Payment Collection Act supplied the closest analog to trustee collection actions under the LMRA and ERISA and applied the short statute of limitations applicable to such actions. While these two decisions result in the existence of a split among the circuits, review is not warranted at this time. As the Eighth Circuit noted, the Third Circuit was without benefit of this Court's decision in *Schneider* at the time it ruled on *DeBolt*. (Petition, Appendix B, 15a-16a).

Since *Schneider*, no other circuit has applied the Third Circuit's rationale. In *Trustees for Alaska Laborers-Construction Industry Health and Security Fund et. al. v. Ferrell*, 812 F.2d 512, 517 n.3 (9th Cir. 1987), the Ninth Circuit noted but did not follow *Byrnes v. DeBolt Transfer*, ruling that "[t]he Trustee's claim can only be characterized as a straightforward breach of contract claim." (p.517). More important, the Eighth Circuit in the case at bar correctly rejected the Third Circuit's position as being inconsistent both with *Schneider, supra*, and with *Central*

*States, Southeast and Southwest Areas Pension Fund v. Central Transport*, 472 U.S. 559 (1985), in which this Court dealt with the administration of multiemployer employee benefit trusts and the corresponding characterization of trustee collection actions.

In light of the supervening decisions of this Court, it may be anticipated that the Third Circuit will itself reverse its approach to the statute of limitations issue thereby obviating the need for Supreme Court review to resolve the split in the circuits.<sup>2</sup>

**2. This Court Should Not Review The Applicability Of An Oral Contract Statute of Limitations Or An ERISA Statute Of Limitations Since The Eighth Circuit Itself Did Not Address These Alternatives; Moreover, Such Alternatives Conflict With This Court's Precedents**

The Court of Appeals did not rule upon the appropriateness of selecting either a statute of limitations governing unwritten contracts (five years both in Iowa and Illinois) or an ERISA statute of limitations (three or six years): "*The choice here is between actions for breach of written contracts and actions under the wage payment collection law.*" (Petition, Appendix B, 13a, emphasis added). Hence, review of these issues is not appropriate at the present time. *Youakim v. Miller*, 425 U.S. 231 (1976). Moreover, Petitioner's assertion that either of the above statutes of limitation might be "most appropriate" is not justified by any of this Court's prior decisions.

Contrary to Petitioner's assertion (Petition, pp. 11-14), there is no conflict between the Eighth Circuit's opinion and *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966). In *Hoosier*, the

---

<sup>2</sup>As contended in the Cross-Petition, the Eighth Circuit did err in applying the written contract statute of limitations of Iowa (the forum state) where Petitioner had consented to the written contract statute of limitations of Illinois in accordance with the Trust Agreements governing the Central States Funds. Consequently, if the Petition is granted, the Court should also review whether the Trust Agreements' "choice of law" provision should be enforced as a matter of federal law.

Court stated only that a union's action for vacation pay on behalf of terminated employees had been "fairly characterized as one not exclusively based on a written contract" since the employees' rights derived both from a collective bargaining agreement and individual employment contracts. (p.706). Noting that "state statutes of limitations governing contracts not exclusively in writing are generally shorter than those applicable to wholly written agreements," the Court stated that application of Indiana's six-year statute of limitations rather than its twenty-year statute of limitations was consistent with "an identifiable goal of labor policy"; i.e., the rapid disposition of labor disputes. (*Id.*, p.707).

Far from asserting that state statutes of limitation for unwritten contracts should govern all Section 301 actions, the Court specifically cautioned that "[t]here may, of course, be Section 301 actions that can only be characterized fairly as based exclusively upon a written agreement." (*Id.*, p.707). Consistent with Section 302(c)(5) of the LMRA as well as *Schneider, supra*, an employer's contractual obligations to employee benefit funds can "only be characterized fairly as based upon a written agreement." Hence, there is no "long standing rule [of this Court] . . . that the forum state's unwritten contract statute of limitations would apply to Section 301 LMRA actions," as Ace Lines alleges (Petition, p.14). Therefore, Congress cannot have been said to have "adopted" such a rule when enacting Section 515 of ERISA.

In enacting ERISA and MPPAA, Congress was concerned solely with protecting the interests of fund participants and beneficiaries and hence with promoting through various strategies the financial soundness of employee benefit funds. The short statute of limitations generally applicable to unwritten contracts is inconsistent with these federal interests, particularly since pension funds would be required to grant credits and benefits to eligible plan participants even if the recovery of delinquent contributions were time-barred. *Central States v. Central Transport, supra*.

As the Ninth Circuit observed in *Hawaii Carpenters Trust Funds v. Waiola Carpenter Shop, Inc.*, 823 F.2d 289, 298 (9th Cir. 1987): "Congress has expressed its clear desire 'to remove jurisdictional and procedural obstacles which . . . appear to hamper [ ] effective . . . recovery of benefits due.'" (citations omitted). A short statute of limitations erects just such a "procedural obstacle" to effective collection efforts, as the Eighth Circuit correctly recognized.

Nor do this Court's decisions support the borrowing of an ERISA statute of limitations, as Petitioner suggests (Petition, pp.16-19). 29 U.S.C. § 1113(a)(1) and (2) contain a statute of limitations for breach of fiduciary duty claims (the earlier of three or six years depending upon Plaintiff's knowledge of the breach). Likewise, 29 U.S.C. § 1451(f)(1) and (2) contain a statute of limitations for withdrawal liability disputes (the later of six years after a cause of action arose or three years after the earliest date on which a plaintiff acquired or should have acquired actual knowledge of the existence of a cause of action). Trustee collection actions arising under Title I of ERISA are not substantively analogous either to Title I breach of fiduciary duty claims or to Title IV withdrawal liability claims. Neither *Del Costello v. Teamsters*, 462 U.S. 151 (1983) nor *Agency Holding Corp. v. Malley-Duff Associates, Inc.*, 107 S.Ct. 2759 (1987) support borrowing a federal statute of limitations where a state law alternative provides a closer, if not *the closest*, analog.

In *Del Costello, supra*, the Court borrowed the six-month statute of limitations applicable to unfair labor practice actions arising under Section 10(b) of the NLRA (29 U.S.C. § 160(b)) because there was no state law statute of limitations that was directly analogous to *hybrid* 301 actions in which an employee was required to prove both breach of contract against his employer *and* breach of the duty of fair representation against his union. The Court distinguished such cases, where the collective bargaining processes have broken down, from "straightforward" breach of contract actions of the type at bar in *Hoosier Cardinal*,

for which a state-law analog was found to be both clear and obvious. 462 U.S. at 163, 165.

In *Malley-Duff*, *supra*, the Court held that the four-year statute of limitations applicable to Clayton Act civil enforcement actions provided the most appropriate limitations period for civil RICO enforcement because: the civil action provision of RICO was expressly patterned after the Clayton Act and was intended to serve the same remedial purposes; the predicate acts establishing a pattern of racketeering under RICO typically occur in more than one state, making a uniform statute of limitations desirable; the predicate acts themselves are of such variety that no single state-law analog could be found. None of these problems exist with regard to selecting a statute of limitations for trustee collection actions arising under ERISA and the LMRA. Moreover, in contrast to RICO actions which were unknown at common law, Central States' actions are based on the Funds' Trust Agreements, written contracts that were originally founded in common law.

In *Malley-Duff*, the Court stated: "Given our longstanding practice of borrowing state law, and the congressional awareness of this practice, we can generally assume that Congress intends by its silence that we borrow state law." 107 S.Ct. at 2762. Hence, the result in that case was the exception not the rule. With regard to ERISA, Congress clearly understood how to fashion a statute of limitations for trustee collection actions had it wished to do so. Consistent with this Court's precedents, the absence of an ERISA limitations period for such actions should not be construed as an invitation to engage in judicial legislation. As the Eighth Circuit clearly recognized, the establishment of a uniform limitations period for *all* ERISA collection actions and binding on *all* multiemployer funds can be achieved only by statutory amendment. (Petition, App. B, 12a). Accordingly, further review by this Court on this issue is not warranted.

### III. CONCLUSION

The Eighth Circuit's selection of a written contract statute of limitations for collection actions under ERISA and the LMRA is consistent with the language of these statutes, with decisions of this Court, and with the decisions of nearly every court of appeals. For these reasons, review of this issue is not required.

Respectfully submitted,

RUSSELL N. LUPLOW, P.C.

By: \_\_\_\_\_

Russell N. Luplow

And: \_\_\_\_\_

Diana L.S. Peters

*Counsel for Respondents/*

*Cross-Petitioners*

33 Bloomfield Hills Parkway

Suite 145

Bloomfield Hills, Michigan 48013

(313) 644-8666

Dated: April 22, 1988